

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Norfolk Southern Railway Company,
Petitioner,

v.

Illinois Department of Transportation, and Edwards County Road
District No. 6,
Respondents.

T00-0015

Petition to permit closing of a certain existing railroad crossing in
Edwards County, Illinois, To Wit: TR 185 (MP 130.52; DOT
#724696V); to construct an access road; and to install automatic
flashing light signals and gates with constant warning circuitry at
a certain existing railroad crossing in Edwards County, Illinois,
To Wit: TR 18 (MP 129.94; DOT #724699R).

THIRD SUPPLEMENTAL ORDER

By the Commission:

On September 20, 2000, the Illinois Commerce Commission ("Commission") entered its Order in this matter that required, among other things, the Norfolk Southern Railway Company ("NS" or "Petitioner") to close, abolish, and barricade the Township Road ("TR") 185 crossing and install automatic flashing light signals and gates controlled by constant warning time circuitry at the TR 18 and TR 36 crossings. The TR 185 crossing was to be closed upon the placing in service of the warning devices at the TR 36 crossing. The Order also required Edwards County, on behalf of Edwards County Road District No. 6 ("County"), to construct a connecting road between the TR 36 and TR 185 crossings. The associated costs were divided between the parties and the Grade Crossing Protection Fund ("Fund"). All work was to be completed within one (1) year from the date of the Order.

On December 5, 2001, the Commission entered its Supplemental Order granting extensions of time to and including December 20, 2001, and June 30, 2002, to the NS and Edwards County, respectively, within which to complete the work as required by the original Order dated September 20, 2000. The Supplemental Order further revised the cost for the work of constructing the connecting road. The new cost for the connecting road is estimated to be

\$180,000, and increase of \$62,000 in Fund participation toward the project. The revised cost was paid 100% by the Grade Crossing Protection Fund.

On February 27, 2002, the Commission entered its Second Supplemental Order granting the County of Edwards permission to close the TR 185 crossing after the completion of the connecting road between TR 185 and TR 36 and not after the installation of the automatic flashing light signals and gates at the TR 36 crossing, as required by the original and Supplemental Orders dated September 20, 2000, and December 5, 2001, respectively. The County stated that in the interest of public safety and convenience, the TR 185 crossing should not be closed, abolished, or barricaded until after the completion of the connecting road between TR 185 and TR 36. On January 23, 2002, the NS filed its Response to the Supplemental Petition stating therein that it had no objection to the change as requested by the County in its Supplemental Petition dated January 23, 2002. Staff reviewed the Supplemental Petition filed by the County and had no objections to the requested change.

On July 24, 2002, the County filed its Supplemental Petition with the Commission requesting an additional sixty (60) days within which to complete the connecting road work as required by the original, Supplemental, and Second Supplemental Orders dated September 20, 2000, December 5, 2001, and February 27, 2002, respectively. The County states that it experienced an extremely wet spring, which made the construction of the connecting road impossible. The County states that, if the weather is suitable for construction, it should be able to complete the roadway between TR 185 and TR 36 within sixty (60) days from the date of this Third Supplemental Order.

Staff has reviewed the Supplemental Petition filed by the County and recommends an extension of time of ninety (90) days from the date of filing of the Supplemental Petition lieu of the sixty (60) day extension requested by the County. Staff's recommendation for an additional thirty (30) day extension is base upon the uncertainty of the weather and, in the event of prolonged or a substantial occurrence of inclement weather, the additional thirty (30) days should allow sufficient time for the completion of the roadway project without the need for the County to petition the Commission for an additional extension of time.

The Commission, having given due consideration to the entire record herein, finds that:

- 1) the Commission has jurisdiction of the parties hereto and the subject matter hereof;

- 2) the recitals of fact set forth in the prefatory portion of this Supplemental Order are supported by the evidence of record and are hereby adopted as findings of fact;
- 3) an extension of time to and including October 24, 2002, should be granted to Edwards County within which to complete the roadway improvement as required by the original, Supplemental and Second Supplemental Orders;
- 4) 625 ILCS 5/18c-1701 and 1704 require each "person", as defined by Section 18c-1104, to comply with every regulation or Order of the Commission. These sections further provide that any person who fails to comply with a Commission regulation or Order shall forfeit to the state not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense. While the Commission expects all parties to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions.
- 5) all other terms and conditions of the original, Supplemental, and Second Supplemental Orders dated September 20, 2000, December 5, 2001, and February 27, 2002, respectively, should remain in full force and effect except as herein modified.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the County of Edwards be, and it is hereby granted, an extension of time to and including October 24, 2002, within which to complete the construction of the connecting roadway between TR 185 and TR 36 as required by the original Order, Supplemental Order, and Second Supplemental Order dated September 20, 2000, December 5, 2001, and February 27, 2002, respectively.

IT IS FURTHER ORDERED that all other terms and conditions of the original Order, Supplemental Order, and Second Supplemental Order dated September 20, 2000, December 5, 2001, and February 27, 2002, respectively, shall remain in full force and effect except as herein modified.

IT IS FURTHER ORDERED that any person or party making a Request For Extension Of Time up to thirty (30) days to complete a project ordered by the Commission must file a request with the Director of Processing and Information no later than fourteen (14) days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person requesting an extension of time that exceeds thirty (30) days must file a Petition for Supplemental Order

with the Director of Processing and Information no later than twenty-one (21) days in advance of the scheduled deadline. The Commission will decide Petitions For Supplemental Orders.

IT IS FURTHER ORDERED that Requests For Extension Of Time and Petitions For Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request For Extension Of Time or a Petition For Supplemental Order, the person must notify the Commission's Rail Safety Program administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that the Commission or its Administrative Law Judge reserves the right to deny Petitions For Supplemental Orders and Requests For Extensions of time, if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that subject to Sections 18c-2201 and 18c-2206 of the Law, this is a final decision of the Commission subject to Administrative Review Law.

By Order of the Commission this 11th day of September, 2002.

Kevin H. Wright

Chairman

JUDGE	<i>[Signature]</i>
SECTION CHIEF	
ORDERS SUPERVISOR	<i>[Signature]</i>